

2-5-2016

State v. Kneeland Appellant's Brief Dckt. 43425

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Kneeland Appellant's Brief Dckt. 43425" (2016). *Not Reported*. 2658.
https://digitalcommons.law.uidaho.edu/not_reported/2658

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43425
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR 2015-1407
v.)	
)	
LESLIE HERBERT KNEELAND,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Leslie Herbert Kneeland appeals from his judgment of conviction for eluding a peace officer. Mr. Kneeland pleaded guilty and the district court imposed a sentence of five years determinate, and the court retained jurisdiction. Mr. Kneeland appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On January 29, 2015, officers observed a vehicle that was not bearing a license plate attached to the front of the vehicle. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) One of the deputies attempted to conduct a traffic stop but the

vehicle failed to yield and appeared to be driving faster. (PSI, p.3.) The vehicle turned into a residential neighborhood and was driving approximately 70 miles per hour in a 25 mile per hour speed zone. (PSI, p.3.) The vehicle eventually stopped and the driver fled on foot. (PSI, p.3.) The deputy eventually apprehended the driver, Mr. Kneeland. (PSI, p.3.) Officers found marijuana residue, pipes, and syringes in and around Mr. Kneeland's vehicle. (PSI, p.3.)

Mr. Kneeland was charged with eluding a peace officer, possession of drug paraphernalia, possession of a controlled substance, and resisting and/or obstructing. (R., p.46.) He eventually entered an *Alford*¹ plea to eluding a peace officer. (R., p.53.) The district court imposed a sentence of five years determinate, and the court retained jurisdiction. (R., p.64.) Mr. Kneeland appealed. (R., p.69.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a sentence of five years determinate upon Mr. Kneeland following his plea of guilty to eluding a peace officer?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Sentence Of Five Years Determinate Upon Mr. Kneeland Following His Plea Of Guilty To Eluding A Peace Officer

Mr. Kneeland asserts that, given any view of the facts, his sentence of five years determinate is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the

character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Kneeland does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Kneeland must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Mr. Kneeland addressed the district court at the sentencing hearing. He stated,

I just wanted to say, you know, I’m getting too old for his, you know. It’s time to, you know, take care of my problems instead of running from them because that’s you know, mostly what I’ve done in my past is just run from my problems and, you know, try to avoid it. Instead now I’m ready to – ready to take it head on and do what I’m supposed to do for my kids, for myself.

(Tr., p.36, Ls.5-13.)

The State recommended that the district court impose a sentence of five years, with two years fixed, and that the court retain jurisdiction. (Tr., p.33, L.1-3.) Counsel for

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

Mr. Kneeland also recommended a rider. (Tr., p.35, Ls.1-2.) Counsel emphasized that Mr. Kneeland recognized that he had an addiction that needed to be addressed and he believed that a CAPP rider would be the best place to address that addiction. (Tr., p.35, Ls.1-12.) He informed the presentence investigator that, "I want drug treatment [and] my plan is to do all recommended treatment [available.] Further, if Mr. Kneeland were given probation following his rider, "he does have support in the community here locally that would him access to resources as far as transportation and housing is concerned. He had been gainfully employed in the past." (Tr., p.35, Ls.16-19.) He could be employed if given probation. (Tr., p.35, Ls.19-21.) Mr. Kneeland had a CDL to drive trucks and had worked at building supply companies. (PSI, p.18.)

In light of the fact that Mr. Kneeland recognized his substance abuse addiction, had the support of friends and family, and could be gainfully employed, Mr. Kneeland submits that the district court abused its discretion by imposing a sentence of five years determinate.

CONCLUSION

Mr. Kneeland respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 5th day of February, 2016.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of February, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

LESLIE HERBERT KNEELAND
INMATE #77681
NICI
236 RADAR ROAD
COTTONWOOD ID 83522

JOHN T MITCHELL
DISTRICT COURT JUDGE
E-MAILED BRIEF

AMANDA R MONTALVO
KOOTENAI COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas